

ER.LTR TT 9/7/97

Use of Students in CRADAs

LBNL, in implementing University of California policy, generally prohibits LBNL's use of any student in a CRADA in which the student's right to publish might be unduly delayed. The University is concerned that a delay may be to the detriment of the student's ability to complete his or her thesis or dissertation in a timely manner, or even to publish in a scientific journal that helps establish the student's credentials for future employment in academia or industry.

LBNL therefore prohibits the use of its students in any CRADA that allows data generated under the CRADA to be designated "Protected CRADA Information" and kept confidential for any lengthy period. (That period is negotiated between LBNL and the company, but may be for up to five years.)

In some cases, however, your potential industrial partner may balance the use of students in the CRADA and the ability to have Protected CRADA Information, and determine that the tradeoff comes out in favor of students. Graduate students in particular represent a dedicated, skilled and highly cost-effective labor source.

If the industry partner concurs in removing the Protected CRADA Information provision from the CRADA contract, the project may include students at LBNL. For the short form, five page CRADA contract, in Article VIII, the blank for period of protection of Protected CRADA Information must be 0 (zero). If the CRADA is under the longer form CRADA contract (e.g., because it exceeds the dollar limits of the short form) the corresponding provision (generally, also Article VIII) must be similarly completed, or the entire article removed. The company's letter of intent must specifically include its concurrence with the above if your project involves LBNL's use of students.

You should note that nonetheless, LBNL will maintain in confidence your industrial partner's "Proprietary Information" (i.e., the confidential information that it brings to the CRADA). Students have no superseding right to publish on material that is not their work and is developed outside the collaborative project. Furthermore, in CRADAs as otherwise, all proposed LBNL publications must receive patent clearance before publication. Publication can be delayed for the relatively short period of time necessary to allow for filing of patent applications that can protect commercially valuable intellectual property.